

REMARKS

The present amendments and remarks are in response to the Official Action mailed February 10, 2006. In the Official Action, the Examiner has withdrawn claims 21-37 from being considered because they are directed to a non-elected invention. In response to the Official Action, Applicants have cancelled claims 21-37 and added claims 38-42 of which claim 38 is independent. Claim 38 includes recitations directed to a vertebral body contact element comprising a flexible element and a coating. The flexible element includes a central portion and a perimeter portion in communication with an orthopedic device. The coating is applied to the perimeter portion of the flexible element such that the flexible element maintains engagement with orthopedic device.

This is contrasted with U.S. Patent No. 5,370,697 to *Baumgartner*, which discloses a support shell 2 provided with a metal lattice 44. *Baumgartner* does not disclose how the metal lattice is attached to the support shell never mind disclosing a coating for attaching the lattice to the shell.

In the Official Action dated August 1, 2005, the Examiner asserts that U.S. Patent No. 5,926,685 to *Krebs* discloses coating or binder that is used to secure a metal mesh to the surface of an implant. Regardless, *Krebs* does not disclose providing a coating around a perimeter of a flexible mesh such that a central portion of the mesh is unencumbered by the coating. By not having any coating on a central portion of the mesh, the central portion may be remote from the orthopedic device and the central portion may be deformably reshaping under anatomical loads, as included in claim 39. Thus Applicants assert that claims 38-42 are in condition for allowance and should be deemed patentable.

In the August 1, 2005 Official Action, the Examiner rejected to the claims in the application under the judicially created doctrine of obviousness-type double patenting.

Specifically, claims 1-4, 8, 11-14 and 18 were rejected to over copending Application No. 10/642,522.

Additionally, previous claims 1-20 are provisionally rejected over copending Application No. 10/642,529. In response to these to rejections, Applicants submit here a Terminal Disclaimer for both applications thereby rendering the rejections moot.

In the Official Action, the Examiner also rejected claims in the present application under 35 U.S.C. 101 as claiming the same invention as set forth in claims 1, 2 and 6 of U.S. Patent No. 6,863,689. Applicants respectively traverse the Examiners rejection and assert that independent claim 38 of the present application includes a recitation directed to a coating that is not found in the claims of U.S. Patent No. 6,863,689.

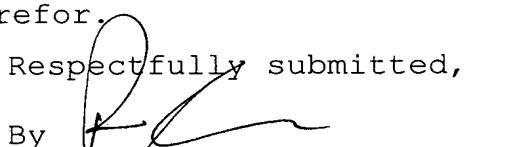
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 9, 2006

Respectfully submitted,

By 
Raymond Garguilo, Jr.
Registration No.: 50,930
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant